



DEPARTMENT OF DEFENSE

Office of the Secretary

Adoption of Department of Navy Categorical Exclusion Pursuant to Section 109 of the National Environmental Policy Act (NEPA)

AGENCY: Defense Advanced Research Projects Agency (DARPA), Department of Defense (DoD).

ACTION: Notice of adoption of the Department of Navy's (DoN) categorical exclusion for passive scientific measurement devices pursuant to section 109 of the NEPA.

SUMMARY: DARPA is adopting the DoN's categorical exclusion 19 for the installation and operation of passive scientific measurement devices. This notice describes the proposed action for which DARPA intends to use the DoN categorical exclusion and details the consultation between the agencies.

DATES: This action is effective [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Dr. Catherine Campbell, 703-526-2044 (Voice), Catherine.Campbell@darpa.mil (Email).

SUPPLEMENTARY INFORMATION:

I. Background

National Environmental Policy Act and Categorical Exclusions

NEPA, 42 U.S.C. 4321–4347, requires all Federal agencies to assess the environmental impacts of their actions. Congress enacted NEPA to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. NEPA seeks to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that

process. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 Code of Federal Regulations (CFR) parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review—an Environmental Impact Statement (EIS), Environmental Assessment (EA), or categorical exclusion. (42 U.S.C. 4336). If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. *Id.* If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. *Id.* Following the EA, the agency may conclude the process with a finding of no significant impact if the analysis shows that the action will have no significant effects. If the analysis in the EA finds that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency may establish in its NEPA implementing procedures categorical exclusions, which are categories of actions the agency has determined normally do not significantly affect the quality of the human environment. (40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d)). If an agency determines that a categorical exclusion covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. (40 CFR 1501.4(b)). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental impacts, the agency may apply the categorical exclusion to the proposed action without preparing an EA or EIS. (40 CFR 1501.4). If the extraordinary circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established 42

U.S.C. 4336(c). To adopt another agency's categorical exclusion under section 109, an agency must identify the relevant categorical exclusion listed in that agency's ("establishing agency") NEPA procedures that cover its category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate; identify to the public the categorical exclusion that the agency plans to use for its proposed actions; and document adoption of the categorical exclusion. *Id.* This notice documents DARPA's adoption of DoN's categorical exclusion under Section 109 of NEPA.

II. Identification of the Categorical Exclusion

DoN's categorical exclusion for the use of passive scientific measurement devices is codified in DoN's NEPA procedures as categorical exclusion 19 in 32 CFR 775.6(f)(19).

Proposed Action

DARPA proposes to deploy a single reef mimicking structure (RMS, 258.2 ft²) on the seafloor of the Kilo Nalu Observatory (KNO) on the south shore of O'ahu, Hawai'i for a period of no longer than five years. A Particle Image Velocimeter (PIV), coral larval settlement modules (20 to 40 dome-shaped concrete structures), and two Acoustic Doppler Velocimeters (ADV's) would be attached to the RMS to test material durability and water flow characteristics. The overall footprint on the seafloor does not increase beyond the size of the RMS when the instruments are attached. The need to collect oceanographic data with this equipment is to inform the design and deployment of reef mimicking structures as part of DARPA's Reefense Program.

III. Rationale for the Categorical Exclusion

The RMS is a passive oceanographic tool developed to dissipate wave energy. The amount of wave energy that is dissipated will be measured by the attached oceanographic instruments (PIV, larval settlement modules, and ADV's). The RMS would not be shallow enough to function as a breakwater; it is a tool to learn whether consistent wave energy can be effectively dissipated (e.g., energy coming in through the exterior holes then bouncing around within the RMS) and to

ensure the durability of the materials. The PIV and ADVs would measure velocity fields of ocean currents and the larval settlement modules would measure material durability. The RMS would not be deployed with any living organisms attached to it. KNO is an established research site managed by the University of Hawaii at Manoa. The site was chosen for this testing because it is already supplied with infrastructure (e.g., electric power) to support other ongoing scientific research and the ground swell is consistent and predictable, thus it can allow for better data collection.

IV. Consideration of Extraordinary Circumstances

If an agency determines that a categorical exclusion covers a proposed action, the agency must evaluate the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. (40 CFR 1501.4(b)). DARPA does not currently have its own NEPA implementing procedures to guide its application of extraordinary circumstances. Until DARPA establishes NEPA implementing procedures, for purposes of considering extraordinary circumstances in connection with the DoN categorical exclusion discussed in this notice, DARPA has considered whether the proposed action has the potential to result in significant effects, including by considering the factors listed in DoN's definition of extraordinary circumstances. (32 CFR 775.6(e)(1)).

DARPA has assessed the extraordinary circumstances and determined they are not present.

V. Consultation with DoN and Determination of Appropriateness

DARPA and DoN consulted on the appropriateness of DARPA's adoption of the categorical exclusion from July to November 2023. This consultation included a review of DoN's experience applying the categorical exclusion and the proposed action for which DARPA plans to utilize it. Following this consultation and review, DARPA has determined that the impacts of the proposed action to install and operate passive scientific measurement devices for a temporary period of time, no longer than five years, in an existing scientific observatory, KNO, is similar to the impacts, which are not significant, of projects for which DoN may apply the categorical

exclusion. Additionally, DARPA determined that there are no extraordinary circumstances. Therefore, DARPA has determined that its proposed use of DoN's categorical exclusion 19, as described within this notice, would be appropriate.

Notice to the Public and Documentation of Adoption

This notice documents adoption of the DoN categorical exclusion listed above in accordance with 32 CFR 775.6(e)(1) and is available for use by DARPA, effective immediately.

Dated: January 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer,

Department of Defense.

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